U.S. Department of Justice

Immigration and Naturalization Service

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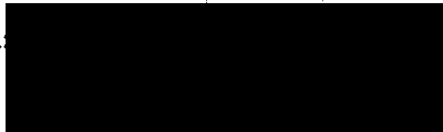File: EAC 99 100 52470   Office: Vermont Service Center   Date:

IN RE: Petitioner:
        Beneficiary:

OCT 4 2000

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and
             Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case.
Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with
the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state
the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must
be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such
a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other
documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to
reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is
demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required
under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be sustained.

The petitioner is a computer software development and consulting firm. It seeks to employ the beneficiary as a programmer analyst for a period of 33 months. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation. Counsel also argues that the petitioner has complied with pertinent regulations regarding submission of evidence.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

> 1.   A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
>
> 2.   A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
>
> 3.   Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary does not hold a United States baccalaureate degree. The beneficiary's foreign education and experience have been found by a credentials evaluation service to be equivalent to a bachelor of science degree in electrical and electronic engineering conferred by a United States institution. The record shows he was employed from April 1996 through June 1998 as a computer programmer and analyst. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the offered position.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty,

or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

> 1.   A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

> 2.   The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

> 3.   The employer normally requires a degree or its equivalent for the position; or

> 4.   The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The duties of the offered position are described in pertinent part as follows:

> We have a position for ███████████████ to provide services in Mainframe Projects, to convert scientific and other technical problem formulations to format processable by computer, resolve symbolic formulation. Prepare flow charts and block diagrams and encodes resultant equation for processing and understanding capabilities of limitation of computer. Confers with other engineering and technical personnel to resolve to problems of intent, inaccuracy, or feasibility of computer processing, enters programs into computer systems. Reviews results of computer runs with interested personnel to determine necessity of modification or returns.

> May coordinate activities of other computer programmers working as part of the project teams, carry out logical data base design, development of business software. Develop system and in DOS, MVS, OS/2 environments, he will design and develop a specification entries translator converter using IMS, DB2, COBOL, and SQL 6.0. He will design and develop databases using DB2 as the backend, carry out project analysis, database design, test and maintain modules, provide technical support in troubleshooting and user training.

The offered position appears to be that of a computer systems analyst. The Department of Labor's <u>Occupational Outlook Handbook</u>, 2000-2001 edition, at pages 111-112 finds that the usual requirement for employment as a computer scientist or engineer is a baccalaureate degree in computer science, information science, or management information systems. It is concluded that the petitioner has demonstrated that the offered position is a specialty occupation within the meaning of regulations.

The director has also introduced the concept of "speculative employment" into this proceeding. There is no support for the exploration of this concept per se in either statute or regulations. Similarly, the director has questioned the petitioner's ability to pay the beneficiary's offered wage. Wage determinations and the enforcement of their payment with respect to the H-1B classification are the sole responsibility of the Department of Labor. It is noted that the petitioner appears solvent and guarantees both employment and the beneficiary's salary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.